

ASSEMBLY - 35TH SESSION

TECHNICAL COMMISSION

Agenda Item 24.1: Protection of sources and free flow of safety information

**PROTECTION OF VOLUNTARILY SUBMITTED
SAFETY-RELATED INFORMATION**

(Presented by the United States of America)

INFORMATION PAPER

SUMMARY

Along with its mandatory safety requirements, the U.S. Federal Aviation Administration (FAA) encourages a number of voluntary system safety programs. These supplementary programs share a common goal of establishing a proactive approach to accident prevention by individual air operators. In sum, operators accept responsibility for identifying adverse safety trends and making appropriate interventions before they lead to accidents, and further, can do so by utilizing tools provided by the FAA. The incentives provided by the FAA for sharing information in the context of these programs with the FAA are (1) protection from release of information to the public, and (2) protection from legal enforcement action by the FAA. Two prominent FAA programs are the Aviation Safety Action Program (ASAP) and the Flight Operational Quality Assurance (FOQA) program. This paper briefly describes those programs and the specific protection provisions that have been established for each of them.

References

FAA Advisory Circular 120-66B, Aviation Safety Action Program (ASAP)
FAA Advisory Circular 120-82, Flight Operational Quality Assurance
Program (FOQA)
FAA Order 8000.81, Designation of Flight Operational Quality Assurance
Information as Protected from Public Release Under 14 CFR Part 193
FAA Order 8000.82, Designation of Aviation Safety Action Program (ASAP)
Information as Protected from Public Release Under 14 CFR Part 193
FAA Order 8400.10, Volume 1, Chapter 5, Section 1, Aviation Safety Action
Program (ASAP)
14 CFR Part 13.401. Flight Operational Quality Assurance Program

1. INTRODUCTION

1.1 In addition to programs required by regulation, the FAA encourages a number of supplementary system safety programs to be implemented on a voluntary basis. The FAA's supplementary system safety programs share a common goal of establishing a proactive approach to accident prevention at the level of the individual operator - by making the operator responsible for identifying and correcting adverse safety trends before they can lead to accidents, and further, by providing the operator with the programmatic tools that enable the achievement of that objective. Two prominent examples of such programs in the U.S. are the Aviation Safety Action Program (ASAP) and the Flight Operational Quality Assurance (FOQA) program.

1.2 The two primary incentives provided by the FAA for sharing information from these programs with the FAA are (1) protection from release of information to the public, and (2) protection from legal enforcement action by the FAA. As these protections are program specific, the applicable provisions will vary by program.

2. AVIATION SAFETY ACTION PROGRAM (ASAP)

2.1 The primary purpose of an Aviation Safety Action Program (ASAP) is to identify and correct adverse safety events that would otherwise not be likely to come to the attention of the FAA or company management. Employees may be understandably reluctant to report information which might result in the FAA taking enforcement action against them, or their employer taking disciplinary action. As a result, important data that might help to correct safety-related deficiencies goes unreported. ASAP addresses this issue by providing enforcement incentives and through protection from company disciplinary action for employee-submitted ASAP reports. This allows the company and the FAA to obtain important safety information of which they might otherwise be unaware, and to act on that information.

2.2 An ASAP is entered into voluntarily by the FAA, a Part 121 or 145 certificated entity (e.g. an air carrier or repair station), and any third party (such as the employee's union) through a Memorandum of Understanding (MOU), which specifies the details of the program. FAA guidance for writing such MOUs can be found in Advisory Circular 120-66B on FAA's public website at <http://www.faa.gov/avr/afs/afs200/afs230/asap/>.

2.3 It is FAA policy not to use the content of any ASAP report to initiate or support any enforcement action against an employee, except for reports that involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification. Similarly, the certificate holder will not use any report submitted under an ASAP to initiate or support any company disciplinary action. Where the employee is the sole source of the information (i.e. all evidence of the event is discovered or otherwise predicated on the report), the FAA will take no enforcement action against the employee for reports accepted under the program. For non-sole source reports accepted under ASAP, the FAA will take administrative action in lieu of enforcement action, when sufficient evidence of a violation exists. Administrative action means a FAA Warning Notice or Letter of Correction, which is expunged from the FAA files after two years. For accepted non-sole source reports without sufficient evidence to prove a violation, the FAA will issue a Letter of No Action, which is expunged, from the files after 30 days. This policy is articulated in FAA Advisory Circular 120-66B.

2.4 An ASAP is not, however, a blanket immunity program for self-reported violations. To be accepted under the program, an ASAP report must be submitted in a timely manner, usually

within 24 hours of the end of the employee's duty shift, or within 24 hours of having become aware of possible non-compliance with the Federal Aviation Regulations. Moreover, the alleged regulatory violation must be inadvertent, and must not appear to involve an intentional disregard for safety. The reported event must not appear to involve criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification.

2.5 ASAP reports are submitted to an Event Review Committee (ERC), comprised of one representative from company management, one FAA representative from the local certificate holding district office, and, if applicable, one representative from the employee's labor association. The ERC determines through consensus whether a report meets program acceptance criteria and if so, the further disposition of all such accepted reports. Lack of qualification issues applicable to individual reporting employees are addressed in ASAP through corrective action (e.g. training) recommended by the ERC. The employee must complete that action or the report will be subsequently excluded from the program, and the event will be referred to the FAA for further investigation and/or reexamination and enforcement action, as appropriate. The ERC may also make corrective action recommendations to the company for systemic safety issues identified through ASAP. The ERC must track the disposition of all such recommendations.

2.6 Under Title 49 of the United States Code (49 U.S.C.) Section 40123, certain voluntarily provided safety and security information is protected from disclosure in order to encourage persons to provide the information to the FAA. The FAA must first find that the information should be protected in accordance with 49 U.S.C. Section 40123. The FAA's rules for implementing Section 40123 are in 14 CFR part 193. If the FAA Administrator issues an order designating information as protected under Section 40123, that information will not be disclosed under the Freedom of Information Act - FOIA (5 U.S.C. Section 552) or other laws, except as provided in section 40123, 14 CFR Part 193, and in the order that designates the information as protected.

2.7 At the inception of ASAP, airlines and labor associations were very concerned that ASAP information shared with the FAA might be released under the FOIA, and interpreted out-of-context for purposes other than safety enhancement. In order to address this concern, FAA Order 8000.82 was issued in 2003 to provide protection under 14 CFR Part 193 from the release of specific information from ASAP received by the FAA. The order permits the FAA to release de-identified and summarized trend information, when needed to explain the rationale for policy or rulemaking, but does not permit the release of specific information from any airline program or any ASAP report. The order further provides that (1) ASAP information residing at the FAA will not be shared with another government agency unless that agency agrees in writing to abide by the release protection provisions of the FAA order, and (2) the FAA will apply appropriate legal means to resist a subpoena for ASAP information in its possession.

2.8 As of April 2004, 35 U.S. airlines are participating in ASAP, and 52 ASAP MOUs have been established for different employee groups (pilots, dispatchers, flight attendants, and mechanics). Feedback since the program was initiated in March 2000 has been highly positive. ASAP is providing an unprecedented opportunity to correct adverse safety events which, prior to the establishment of program, were largely unknown and which otherwise would have continued uncorrected.

3. FLIGHT OPERATIONAL QUALITY ASSURANCE (FOQA)

3.1 FOQA is a voluntary airline program for the routine collection and analysis of digital flight data generated during line operations. Although it enables monitoring of individual aircraft

operations and system performance, its principal value is in providing objective information on adverse safety trends obtained by aggregating data from multiple flights. Acquisition of such aggregate data can provide an unprecedented basis for proactive intervention to correct unsafe trends before they can lead to accidents. In July 1995, the FAA initiated a FOQA Demonstration Project that was highly successful in facilitating the growth of voluntary FOQA programs for major U.S. operators. It also permitted the FAA to gain the insight needed to establish a regulatory framework for FOQA.

3.2 A final FOQA rule, 14 CFR Part 13.401, was issued by the FAA on October 31, 2001. The FOQA rule codifies protection from the use of data from FAA-approved FOQA programs for enforcement purposes, except for criminal or deliberate acts. No airline is required to have a FOQA program, nor to obtain FAA approval of its program. However, an airline that seeks the enforcement protection of the rule must obtain FAA approval of its FOQA Implementation and Operations (I&O) Plan. The FOQA rule requires participating airlines to inform the FAA of adverse safety trends revealed by their programs, as well as corrective action undertaken. The rule also requires the airline to provide the FAA with aggregate FOQA data in a form and manner acceptable to the FAA Administrator.

3.3 FAA Order 8000.81, issued in 2003, designates FOQA data as protected from public release, including FOIA requests, under 14 CFR Part 193. As with the ASAP designation, the order permits the FAA to release de-identified and summarized information to explain the rationale for policy or rulemaking, but otherwise prohibits the release of airline-specific FOQA data that is provided to the FAA.

3.4 Although Standard 3.2.3 in ICAO Annex 6, Part I requires that, in effect, routine collection and analysis of Flight Data Recording (FDR) data become a standard practice in airline safety programs worldwide by January 2005, the FAA has no plans to implement this Standard. The FAA believes that the safety goals of FOQA are better served if the program remains voluntary. The FAA has been able to achieve wide participation in FOQA by major U.S. airlines on a voluntary basis.

3.5 As of April 2004, there are 13 U.S. airlines with FAA-approved FOQA programs. There are many examples of how FOQA data has been used by those airlines to enhance safety. U.S. airlines have used FOQA to identify every airport in the world to which they fly at which unstable approaches and/or GPWS warnings on approach have occurred with frequency. Airlines have developed more aggressive stable approach criteria as one component of a solution, and are working with air traffic and airport authorities where their participation in a solution is required. U.S. airlines have aggregated their FOQA data on the frequency and location of TCAS Resolution Advisories and documented a growing risk of a mid-air collision at certain locations. A joint FAA/industry working group has been established to study causation and develop solutions for that and other safety related issues identified through FOQA. FOQA data has been used to document anomalies specific to particular make, model, and series of aircraft, and that information has been provided to manufacturers. Manufacturers have used FOQA data as a basis for developing advisories and/or engineering solutions to those issues.

4. CONCLUSION

4.1 FOQA and ASAP are complementary programs. The former provides objective data on how the aircraft actually performed while the latter provides invaluable insight into employee perception regarding the causation of unsafe events. The FAA provides enforcement incentives (i.e. lesser or no enforcement action for violations revealed by the program) for both programs,

and data shared with the FAA from either program is protected under 14 CFR Part 193 from release to the public. These incentives have been effective in encouraging wide participation in one or both programs. Nearly all FOQA participating U.S. airlines also participate in ASAP. Both programs have become important components in airline safety programs in the United States.